THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0893, In the Matter of Catherine Gilman and George Gilman, III, the court on December 22, 2006, issued the following order:

The respondent, George Gilman, III, appeals and the petitioner, Catherine Gilman, cross-appeals, a decision of the trial court construing the parties' permanent stipulation incorporated in their divorce decree. The respondent argues that the trial court erred in: (1) finding that the payroll tax liability was a joint income tax liability; (2) finding that the respondent was liable for 50% of that liability under the terms of the permanent stipulation; and (3) failing to enforce a subpoena served upon an IRS representative. The petitioner argues that the trial court erred in finding that she was liable for one half of the mortgage payments from the date of the stipulation until the marital home was sold. We affirm.

When a dispute arises concerning the provisions of a stipulation in a divorce proceeding, we consider the intent of the parties. Miller v. Miller, 133 N.H. 587, 590 (1990). To determine intent, we consider the situation of the parties at the time of their agreement and the object that was intended thereby together with the provisions of their agreement taken as a whole. Id. Absent fraud, duress, mutual mistake or ambiguity, the parties' intentions will be gleaned from the face of the document. Id. Questions of intent are to be resolved by the trier of fact whose findings will be upheld if supported by the evidence, while the meaning of the language of the decree is a matter of law that we review de novo. Id.

The respondent first contests the trial court's finding concerning the daycare payroll tax liability. The trial court found that the parties intended to divide equally any debt that existed prior to execution of the stipulation. The court also found that the taxes associated with the daycare were reported on the parties' federal joint income tax return and that a tax deficiency associated with the business payroll was assessed for the years that the parties filed jointly. There is evidence in the record to support these findings.

The respondent also argues that the trial court erred in failing to enforce a subpoena served upon an IRS representative. In considering the respondent's request to allow late submission of evidence, the trial court noted that he had neither issued the subpoena nor sought IRS records until the week before trial. While this factor alone might be sufficient to affirm the trial court's ruling, see State v. Cromlish, 146 N.H. 277, 280-81 (2001) (trial court's decision concerning admissibility of evidence reviewed under unsustainable exercise of discretion standard); State v. Lambert, 147 N.H. 295, 296 (2001) (explaining unsustainable exercise of discretion standard), it is also sustainable because unless the IRS representative was present at the time the parties executed the stipulation, the prospective evidence was not relevant to their intent at that time. See N.H. R. Ev. 401 (definition of relevant evidence).

In her cross-appeal, the petitioner argues that the trial court erred in finding that she was liable for payment of one half of the mortgage payments on the parties' marital residence from the date of the stipulation until the residence was sold. The relevant provision of the stipulation clearly supports this finding; the parties' post-stipulation actions and trial testimony provide additional support.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

Eileen Fox,
Clerk